



Rhode Island Bar Journal

Rhode Island Bar Association Volume 73, Number 3, November/December 2024

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in Rhode Island**

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Front Cover Photograph by Brian McDonald **Chase Farm, Lincoln** Chase Farm was once one of Lincoln's last operating dairy farms. In 1979, the land was sold to the Town of Lincoln on the condition that it be preserved as open space. Today, the town-owned Chase Farm Park is now a historic site and is a popular spot for dog walking, hiking, sledding, and summer concerts.



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As a member of the Rhode Island Bar Association, I pledge to conduct myself in a manner that will reflect honor upon the legal profession. I will treat all participants in the legal process with civility. In every aspect of my practice, I will be honest, courteous and fair.

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Why Mentorship Matters



Christopher S. Gontarz, Esq.
President
Rhode Island Bar Association

“By sharing your experience, knowledge, and insights, mentors help mentees navigate the complexities of their area of expertise, allowing them to build confidence and competence while fostering a sense of identity within our profession.”

I had the opportunity to address first-year Roger Williams University Law School students at their orientation, and in preparation of what to speak about, I thought about Scott Turow’s autobiographical book, *One L!*. Would the Socratic method of teaching, as exemplified by Professor Charles Kingsfield in *Paper Chase*,² be on display? The students were spared the Socratic ordeal and were instead welcomed to the start of their legal studies by the Dean. Since we are a unified Bar Association, I took the opportunity to introduce the benefits of membership in our Bar Association. Some of these benefits include access to over twenty-five Bar Committees dedicated to a wide range of practice areas and legal issues; the Public Services Programs where our members dedicate their time to the benefit of our community; our continuing legal education programs where our members generously offer their expertise; the opportunity to read or submit scholarly articles in the *Rhode Island Bar Journal*, which can establish an attorney as an expert in their field of practice among their peers; and access to Fastcase for legal research. I stressed the importance of the Bar being a community and the numerous career development opportunities we offer.

I shared the following convictions with the students:

“Welcome to the study of law. Our profession forms the bedrock of society. The legal profession embodies specialized knowledge, expertise, ethics and most importantly, commitment.

Our profession transcends the confines of a job; it embodies a dedication to serving society with a high degree of competency and integrity. Unlike mere occupations, which primarily focus on tasks and remuneration, our profession entails a deeper sense of responsibility toward clients. The hallmark of our profession lies in its unwavering commitment to upholding ethical standards.

The Rhode Island Bar Association is more than just a professional organization; it is a community where you can build connections and find support to navigate your legal studies as well as your future career. I encourage you to become a law student member of the Rhode Island Bar Association.”

I encouraged the students to take advantage of the complimentary law student membership we now offer and, as their schedule permits, to attend Bar functions, whether it be a CLE program or a Bar Committee meeting as a non-voting member. I urged the students to check out the Bar website and specifically inquire about the mentor programs we offer so they’re ready to take advantage upon entering the practice. These programs include the traditional mentorship program, where attorneys can be paired with a seasoned member of our Bar for support and advice; or our online attorney resources program, where members can scroll through a list of available mentors to receive timely and direct peer assistance with practice-related questions; and also our Volunteer Lawyer Mentor Program, where members who decide to take a pro bono case can be mentored by a panel member with experience in that particular area of law and with the Bar’s pro bono programs in general.

In order to support these mentor programs, we need participation. I encourage our members to volunteer to be mentors with the Bar Association and share their experiences and wisdom with other members. Mentorship serves as a critical component in professional development, providing guidance, support and encouragement. Being a mentor helps cultivate the next generation of talent who can uphold the standards and values intrinsic to our profession. By sharing your experience, knowledge, and insights, mentors help mentees navigate the complexities of their area of expertise, allowing them to build confidence and competence while fostering a sense of identity within our profession. I was fortunate to be mentored by two lawyers whom I greatly admired, Joe Houlihan and John Lynch. Both shared their expertise and experience with me, and I still remember their sage advice to this day. Mentees benefit immensely from the guidance of seasoned attorneys who can offer real-world insights that

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extend beyond academic learning. As a mentor, you can share your knowledge but also provide context regarding the responsibilities, challenges, and ethical considerations that define the legal profession. And, perhaps most importantly, through the perspective of my current lens, by being a mentor, you promote a sense of belonging in the Rhode Island Bar Association. An attorney who excels as a mentor is recognized biennially by the Bar Association with the *Joseph T. Houlihan Lifetime Mentor Award* “for extraordinary commitment to mentoring service as an exceptional role model, and outstanding contributions to the ideals of ethics, civility and professionalism and legal skills.”

During my four-decade career, I have had the privilege to mentor dozens of attorneys. There are reciprocal benefits for being a mentor. Engaging with a mentee is rejuvenating, permitting you to reflect on your own experiences and the lessons you have learned during your career. Mentoring also encourages continued learning to stay up to date with the ever-changing practice of law and allows us to

gain fresh perspectives from the newer generation of lawyers.

By being a mentor, not only do you establish your commitment to fostering the growth and success of the next generation of attorneys within the Rhode Island Bar Association, but you also help to ensure our profession as a whole continues to thrive.

ENDNOTES

- 1 One L, *Scott Turou, Putman, 1977.*
- 2 The Paper Chase, *John Osborn, Jr., Houghton Mifflin, 1971.* ♦

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Attorney **Brianna Repetto**, a member of the Lawyer Referral Service, enthusiastically supports the program. *“Finding an attorney to guide you through the legal process during life’s most critical moments can be quite daunting. The Lawyer Referral Service offers a much more intimate opportunity to connect the public with the right attorney compared to a simple internet search. I highly recommend this service for both members of the public and private counsel looking to give back or expand their business!”*



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Applications and more detailed program information and qualifications may be found on our website ribar.com in the Members Only section. You may also request information by contacting Public Services Director Susan Fontaine at 401-421-7799 or email sfontaine@ribar.com.

Rhode Island Bar Journal

Editorial Statement

The *Rhode Island Bar Journal* is the Rhode Island Bar Association's official magazine for Rhode Island attorneys, judges and others interested in Rhode Island law. The *Bar Journal* is a magazine published bi-monthly, six times annually, and digitally distributed to, among others, all practicing attorneys and sitting judges, in Rhode Island. This constitutes an audience of over 6,300 individuals. Covering issues of relevance and providing updates on events, programs and meetings, the *Rhode Island Bar Journal* is a magazine that is read on arrival and, most often, kept for future reference. The Bar Journal publishes scholarly discourses, commentary on the law and Bar activities, and articles on the administration of justice. While the *Journal* is a serious magazine, our articles are not dull or somber. We strive to publish a topical, thought-provoking magazine that addresses issues of interest to significant segments of the Bar. We aim to publish a magazine that is read, quoted and retained. The *Bar Journal* encourages the free expression of ideas by Rhode Island Bar members. The *Bar Journal* assumes no responsibility for opinions, statements and facts in signed articles, except to the extent that, by publication, the subject matter merits attention. The opinions expressed in articles, interviews, columns, and editorials are not the official view of the Rhode Island Bar Association. Letters to the Editor are welcome.

Article Selection Criteria

- > Contributors are requested to submit article, book review, editorial, and interview topic ideas for approval to the Managing Editor prior to submission.
- > The *Rhode Island Bar Journal* gives primary preference to original articles, written expressly for first publication in the *Bar Journal*, by attorney and judicial members of the Rhode Island Bar Association. The *Bar Journal* does not accept unsolicited articles from individuals who are not members of the Rhode Island Bar Association unless co-authored with a RIBA member. Law student members may submit articles co-authored by either a law school professor (not necessarily a RIBA member) or a RIBA member.
- > A maximum of two authors (co-authors) is permitted for article submissions.
- > Articles previously appearing in other publications are typically not accepted.
- > All submitted articles are subject to the *Journal's* Editor's approval, and they reserve the right to edit or reject any articles and article titles submitted for publication.
- > Selection for publication is based on the article's relevance to our readers, determined by content and timeliness. Articles appealing to the widest range of interests are particularly appreciated. However, commentaries dealing with more specific areas of law are given equally serious consideration.
- > Preferred format includes: a clearly presented statement of purpose and/or thesis in the introduction; supporting evidence or arguments in the body; and a summary conclusion.
- > Citations conform to the Uniform System of Citation
- > Maximum article size is approximately 3,500 words. However, shorter articles are preferred.
- > While authors may be asked to edit articles themselves, the Editor reserves the right to edit pieces for legal size, presentation and grammar.
- > Articles are accepted for review on a rolling basis. Meeting the criteria noted above does not guarantee publication. Articles are selected and published at the discretion of the Editor.
- > Submissions are preferred in a Microsoft Word format emailed as an attachment.
- > Authors are asked to include an identification of their current legal position and a photograph, (headshot) preferably in a jpg file of, at least, 350 d.p.i., with their article submission.

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An Attorney's Guide to State Contracting in Rhode Island

This article is a special project by a participant of the 2023–2024 Leadership Academy, developed with feedback and edits from their mentor. It reflects the dedication and growth fostered within our program. We are proud to showcase the hard work and insights of our future leaders.



Daniel W. Majcher, Esq.¹
R.I. Department of Administration
Providence



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Adler Pollock & Sheehan PC
Providence

“A key provision is the requirement that only the State’s representative listed in the agreement may give consent on behalf of the State.”

The process of entering into a contract with the State of Rhode Island (“State”) for goods and services may be a daunting task for the uninitiated. Even just knowing what terms may apply to engagement with the State is an enigma. Knowing whether it is possible and how to negotiate these terms on behalf of your client, moreover, is also a mystery. This article is intended to provide guidance for attorneys to: 1) identify the general terms and conditions that may apply to an agreement with the State; 2) explain the State’s updated contracting process; and 3) provide some guidance on how to address contractual matters with the State.

This article is NOT an attempt to explain the State’s complex procurement process, which would require another longer article or even a treatise. Rather, this article will focus on the contracting process and the resulting agreement that is entered into between the State and its vendor. With that said, the type of procurement method (i.e., source selection) being used by the State is important and may influence the resulting contract and the ability of a vendor to negotiate terms.

For example, if the engagement with the State is being procured through a sole source procurement (i.e., without competition), there may be more room for negotiation and the vendor may have more leverage. Alternatively, if the State procurement is conducting a competitive bid process (i.e., competitive sealed bidding or a Request for Proposals), there may be less of an opportunity to negotiate terms and much less leverage. However, even when a contract is competitively procured by the State, a vendor has an opportunity to raise issues and negotiate contractual terms; the key is knowing when and how that should be done within the State’s procurement process.

First, this article will discuss the State’s relatively new contracting process, which was significantly changed in 2019. Second, this article will provide a comprehensive overview of the terms that apply to an agreement between the State of Rhode Island and a vendor.²

I. The State’s Contracting Process

In understanding the State’s contracting process, it may be helpful to include some historical perspective that led to a paradigm shift in 2019. Prior to 2019, the State had a bare-bones set of

general conditions (adopted through regulation) that would apply only to a contract procured through competitive procurement (competitive sealed bidding or a Request for Proposals). As will be discussed in Section II, the State’s General Conditions were comprehensively updated effective January 1, 2019. Along with that update of the General Conditions, the State changed its contracting practice.

Prior to 2019, after a tedious procurement and evaluation phase (which often would take two (2) to three (3) months), the State would issue a tentative selection letter to the vendor. At that time, the vendor and the State agency seeking the services would be authorized to enter into contract negotiations prior to the issuance of a Purchase Order. This contracting period would often take several months and occasionally would even lead to a withdrawal of tentative selection if the vendor and the State could not reach an agreement.

The contracting process prior to 2019 led to several issues: 1) unfavorable terms for the State; 2) extremely inconsistent terms across departments; 3) unfairness to unsuccessful bidders who did not have the same opportunity to negotiate; and 4) significant delay in the process.

By allowing a negotiation after the fact of the procurement, the vendor was given a second bite at the apple. Sometimes, the negotiated terms differed from those proposed in response to the solicitation and were more favorable to the vendor. This process raised issues of fairness for the unsuccessful bidders. If the unsuccessful bidder had known they could limit liability, for example, would they have priced their proposal lower?

Another issue prior to 2019 was that the State’s General Conditions were not regularly applied to sole-source engagements. Oftentimes, in the case of a sole source, an agency of the State would simply sign the vendor’s form agreement “as is.” While this practice may have streamlined the contracting process for sole-source procurements, agreeing to the vendor’s one-sided terms was not in the best

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The Rhode Island Bar Foundation sends its grateful appreciation to the banks participating in our Interest on Lawyers Trust Accounts (IOLTA) Honor Roll Bank program. Many banks in Rhode Island participate in the Rhode Island Bar Foundation IOLTA Program, which is administered by the Rhode Island Bar Foundation. The IOLTA Program funds critical services in Rhode Island communities. Through IOLTA grants, thousands of our most vulnerable citizens receive free or low-cost civil legal services. The RI Bar Foundation would like to especially highlight our IOLTA Honor Roll Bank participants. These financial institutions agree to pay a net yield of at least 65 percent of the federal fund's target rate on IOLTA deposits. Their participation in the IOLTA Program exemplifies their commitment to upholding the Federal Community Reinvestment Act. Participating banks appear below:



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interests of the State and did not protect the public fisc.

Because of these issues, the Department of Administration undertook a project to comprehensively update its General Conditions and change its process with respect to contract negotiation starting in 2018. Effective January 1, 2019, the Department of Administration adopted a comprehensive set of General Conditions as a regulation through the State's Administrative Procedures Act. As a result, after a public rulemaking process, the General Conditions have the force and effect of law. Additionally, around this time, the Division of Purchases updated its Bidder Certification form, implemented several contract addenda, and customized a set of approved AIA agreements for Public Works projects to be incorporated into the General Conditions (discussed below).

Corresponding with the new set of General Conditions (effective January 1, 2019), the State also changed its process to eliminate any negotiation of the legal terms after the fact. Rather, bidders are now required to either agree to the General Conditions "as is" or propose alternate or qualified terms and conditions *at the time of proposal submission, not after the fact.*

Importantly, vendors and the attorneys should be aware that even before the bid or proposal is submitted, there is an opportunity to change the resulting contract terms if necessary. The main difference is that now it happens during the procurement process and not after the fact. Here is what you need to know:

A. The Pre-Bid Process

All competitive procurements are posted on the Division of Purchases website at: <https://ridop.ri.gov> through Ocean State Procures™ ("OSP"), the State's eProcurement system for vendor registration,³ solicitation, and awards. In competitive procurements through competitive sealed bidding (either a Request for Quotes or Request for Proposals), there is a period of about a month after notice of the procurement is posted. During that time, there is generally a question-and-answer period through email and a pre-bid conference (especially for public works projects). Regardless of the delivery method, contractors and architects should always attend any pre-bid conference held by the State, whether or not mandatory, and monitor the Division of Purchases website for addenda and supplemental information. Ideally, at this time, a vendor should raise any questions and concerns regarding the contract terms and, if necessary or appropriate, suggest alternative or qualified terms or conditions. This exchange will allow the State to consider the request and potentially apply the terms to all of the vendors through an addendum to the solicitation.

For example, if the vendor is extremely concerned about the extent of liability in a particular engagement or has some concerns about the required insurance, they may raise the issue during the pre-bid period (during the Q&A or at the pre-bid conference), and then the State can consider the request and very easily amend the procurement to include those alternative terms. This approach will allow all vendors to bid on the same terms equally. By waiting, the vendor faces the risk of competing against other vendors who are willing to agree to the State's terms "as is."

B. The Bid Submission Process

Assuming the vendor does not raise the issue during the pre-bid period, or the State does not amend the terms, the vendor may submit a proposal with an alternate or qualified offer. Of

course, the State would prefer the vendor to agree to its General Conditions as is, and the vendor faces the risk of being left behind if it submits a qualified offer. However, that does not mean the vendor should not submit a qualified or alternate offer if a contractual term(s) presents a real issue to the vendor.

This process to submit a conditional or qualified offer is reflected in the General Conditions at 220-RICR-30-00-13.3(C) (3), which provides:

Qualified or conditional offers which impose limitations of the Vendor's liability or modify the requirements of the solicitation, offers for alternate specifications, or offers which are made subject to different terms and conditions, including form contracts, other than those specified by the State may be, at the sole discretion of the State Purchasing Agent:

- a. Rejected as being non-responsive; or,*
- b. Set aside in favor of the requirements set forth in the solicitation (with the consent of the Vendor); or,*
- c. Accepted, if the State Purchasing Agent determines in writing that such acceptance is in the best interest of the State.*
- d. Acceptance or rejection of alternates or counter-offers by the State Purchasing Agent shall not constitute a precedent and shall not be considered to be binding on successive solicitations or procurements.*

Additionally, the standard language provided by the Division of Purchases with respect to qualified or conditional offers is as follows:

In the Vendor Certification Questionnaire, question "Certifications 11.", bidders shall certify agreement to the State's contract terms.

However, in accordance with Section 220-RICR-30-0013.3(C) (3) of the General Conditions, the Vendor may submit in their bid or proposal, "[q]ualified or conditional offers which impose limitations of the Vendor's liability or modify the requirements of the solicitation, offers for alternate specifications, or offers which are made subject to different terms and conditions, including form contracts, other than those specified by the State."

However, qualified or conditional offers may be, at the sole discretion of the State Purchasing Agent: 1. Rejected as being non-responsive; or, 2. Set aside in favor of the requirements set forth in the solicitation (with the consent of the Vendor); or, 3. Accepted, if the State Purchasing Agent determines in writing that such acceptance is in the best interest of the State."

By submitting a conditional or qualified offer, the Vendor bears the risk of their bid or proposal being considered non-responsive. In the event the State receives a conditional or qualified offer, the State reserves the right to conduct a best and final offer process offering the same terms to all vendors and/or reject a qualified/conditional proposal as being non-responsive at any time during the review process. The Vendor should not assume that any further negotiation will occur upon selection.

Upon submission, the Division of Purchases and the reviewing agency, if any, will take into consideration any conditional or qualified terms submitted by bidders. In the event that there are multiple proposals and only one bidder is requesting modified terms or conditions, the Division of Purchases will inform the bidder of this situation and request that the bidder either withdraw its request for conditional/qualified terms or withdraw



Rhode Island Bar Foundation

Founded in 1958, the Rhode Island Bar Foundation is the non-profit philanthropic arm of the state's legal profession. Its mission is to foster and maintain the honor and integrity of the legal profession and to study, improve, and facilitate the administration of justice. The Foundation receives support from members of the Bar, other foundations, and honorary and memorial contributions.

Today, more than ever, the Foundation faces great challenges in funding its good works, particularly those that help low-income and disadvantaged people achieve justice. Given this, the Foundation needs your support and invites you to complete and mail this form with your contribution to the Rhode Island Bar Foundation.

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Serve Your Community with the Bar's Volunteer Lawyer Program!

Attorney **Suzannah Skolnik**, a member of the Volunteer Lawyer Program (VLP), enthusiastically supports the program. *“At its core, being a lawyer is about helping your client find a solution to a problem. The clients I've assisted through the Volunteer Lawyer Program have faced big problems, often with far-reaching implications in their lives. But more often than not, the solutions have been simple ones. It's satisfying to put my skills and knowledge to work in such a concrete and impactful way.”*

Participation in our **Volunteer Lawyers Program** provides crucial legal assistance to those in need. Whether you have been an attorney for years or it is the beginning of your career, pro bono cases can provide the opportunity for you to explore new areas of law, and seasoned members of the Bar are available as mentors. Your involvement in VLP ensures marginalized individuals receive vital representation, playing a key role in fostering justice. Join today and you can make a difference in the lives of those who need it most.

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from consideration. Thus, if the State has six (6) vendors willing to agree to the terms as is and one (1) vendor who is proposing conditional/qualified terms, the State has the leverage to reject the vendor's request.

In the event that there is limited competition or multiple bidders request qualified terms (such as limited liability), if the Division of Purchases deems the request to be reasonable, the Division of Purchases may accept the term(s) or it also may issue a best and final offer (BAFO) process and give all of the bidders the opportunity to resubmit pricing based on modified terms. Importantly, the terms are negotiated at the same time the proposals are being evaluated (when the State has leverage and multiple vendors in the mix) and not after selection has already occurred when a vendor knows they have already been tentatively selected for the contract.

In all cases, the vendor should be selective in what contractual provisions the vendor chooses to negotiate. The General Conditions and its addenda take a shotgun approach and are intended to cover multiple types of contracts. They include many provisions that may not apply to a specific engagement between the State and a vendor. The General Conditions, in several instances, manage applicability by including language like “unless otherwise provided in the solicitation.” Additionally, there are provisions related to the delivery of goods that would clearly not apply to a service contract. If one of the provisions clearly does not apply to the engagement, it is probably not worth negotiating the issue!

Wholesale redlines of the General Conditions will not be considered kindly by the State. If a vendor is considering submitting a qualified or conditional offer, the vendor should prioritize areas of negotiation that create a significant business risk or would lead to a substantial cost. The common areas of contractual tension raised by vendors in the past are with warranties, insurance requirements, indemnification, and ownership of intellectual property/work product, though certainly any term is fair game if it causes a substantial business risk or cost to the vendor.

C. Post Selection

By incorporating contract negotiation earlier in the procurement process, at the time of submission and proposal review, the result is the elimination of a long, drawn-out process of contract negotiations after the fact. In a perfect situation, once the vendor is tentatively selected, they will simply need to submit insurance certificates, bonds if applicable, and MBE/WBE requirements, and the Division of Purchases can simply issue the Purchase Order. Basically, this method of procurement equates to a “sign on the dotted line” type of process. There is no longer a period of contract negotiations after the procurement and no longer a delay for a subsequent negotiation.

Of course, there may be some exceptions. If there is a complex project being procured and the State and vendor need to iron out a scope of work, deliverables, milestones, payment terms, and other key terms and conditions, some exchange and even negotiation may need to occur, but all the legal terms should generally be all set.

D. Sole Source

As discussed, the General Conditions still would serve as the default for a contract procured through a sole source, including, without limitation, the obligation of good faith and fair dealing.

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Because of the nature of a sole source procurement (only one vendor), however, the vendor may have more leverage to raise issues and negotiate terms. The vendor should, nevertheless, be reasonable in negotiating such terms. In fact, if the vendor has another agreement with the State that was competitively bid, the State would expect the vendor to agree to the same terms.

II. What are the Contract Terms with the State of Rhode Island?

While the above sections describe the State's updated process for negotiating and contracting, it is important for vendors and their lawyers to have a fundamental understanding of the terms of a contract with the State. This is not always a simple task: While there is now a standard set of comprehensive General Conditions that form the base agreement in all cases, there are additional terms that may apply depending on the type of engagement and may be added as an addendum.

A. General Conditions of Purchase

Chapter 2, Title 37 (R.I. Gen. Laws §§ 37-2-1 *et seq.*) governs State purchases and provides the framework for the State contracting process. The General Conditions of Purchase, 220-RICR-30-00-13 *et seq.*,⁴ "serve as the base agreement between the State of Rhode Island ("State") and a Vendor." 220-RICR-30-00-13.1 (Purpose). The General Conditions apply to all vendor contracts regardless of procurement method. *Id.* The General Conditions' thirty-five (35) sections include the basic provisions typically covered in any standard contract, including provisions such as indemnification, intellectual property/ownership, warranties, insurance, vendor obligations, and confidentiality provisions. Pursuant to R.I. Gen. Laws § 37-2-13(5), the provisions of the state purchasing regulations are incorporated by operation of law in all state contracts. In particular, every state contract imposes the obligation of "good faith" upon both the State and the vendor in their performance of the contract, where "good faith" means "honesty in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing." R.I. Gen. Laws § 37-2-3(b). These are the State's standard terms, and all entities doing business with the State should be familiar with them.

Incorporated with the General Conditions are applicable addenda (discussed below), state and federal laws and regulations, the solicitation requirements, the vendor's bid or proposal (if applicable), and the vendor's bidder certification form. *See* 220-RICR-30-00-13.4(A). Further, if there are any conflicts among those incorporated items, the General Conditions prescribe an order of precedence. *See* 220-RICR-30-00-13.4(B). Between the General Conditions and these incorporated items, the majority of the time, the State is generally comfortable with issuing a purchase order to a vendor without any additional contract documents. Easy peasy, right?

Unfortunately, not so easy! Because there are so many variations in the types of agreements with the State, including contracts for various goods, services, software, hosting solutions, construction and public works, there is no one size fits all solution. The General Conditions were designed, however, to include addenda ("GC Addenda"), which may apply and may be incorporated into the agreement if applicable. For example, if the contract involves a public works project (construction), an appropriate AIA agreement will be attached as an addendum to the General Conditions.

Continued on page 28

Annual Meeting Workshop Proposals Due November 8!

Do you have a great idea for a workshop or a speaker suggestion for the 2025 Annual Meeting? The Annual Meeting Planning Committee is eager to hear from you!

The 2025 Annual Meeting will be held in person at the Rhode Island Convention Center on Thursday, June 12th and Friday, June 13th. Each year, the Committee strives to design two days of engaging legal education to meet the diverse needs of Rhode Island practitioners, covering various levels of experience and areas of practice.

We encourage you to submit one or more workshop proposals to help us create a program that will serve our Bar community. Initial proposals, consisting of a brief description of your suggested workshop, are due by **November 8, 2024**.

To access the 2025 Annual Meeting workshop proposal form, [click here](#), or visit the Bar's website at ribar.com and click on the Continuing Legal Education dropdown menu and select the 2025 Annual Meeting. Please contact CLE Director Madeline Benner at 401-421-5740 or mbenner@ribar.com if you have any questions.



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A Case Study of an Appraisal: Protecting the Homeowner from Mayhem



Peter J. Comerford, Esq.
Coia & Lepore, Ltd
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John E. Anderson
J.E. Anderson & Associates

“...the perceived problem of predatory assignees would disappear if the insurers did what they are supposed to do in the proper handling of the appraisal process...”

The January/February 2024 issue of the *Rhode Island Bar Journal* carried an article by Jordan Z. Sasa¹ opposing the free assignability of insurance claims, basing that opposition upon the apparently abusive conduct of a particular entity that takes assignments of first-party property damage claims, and tying that abusive activity to increasing insurance premiums more broadly.² The article argues for scrutiny and, perhaps, reform or prohibition of the free assignability of insurance claims. Our article argues that any such reform ought to look more broadly at the function of such assignments in our tort system. For example, the mechanism for collecting damages in excess of the policy limits where there has been a so-called *Asermely* demand for the policy limits is for the injured party to get an assignment of the bad faith claim that inures to the policy holder/tortfeasor whose carrier refuses a demand to settle within the policy limits.³ As such, an assignment under *Asermely* plays a crucial role in the injured party being made whole. Such broad policy questions are beyond the scope of the present article, but need to be part of the discussion about such proffered reforms.

The present authors believe that the perceived problem of predatory assignees would disappear if the insurers did what they are supposed to do in the proper handling of the appraisal process, and if insureds were aware of the availability of prejudgment interest in the appraisal process as an incentive to insurers for expeditious claims handling. To look at those issues, we will recount the war story of a recent claim we worked on together.

In February of 2010, Guy Homeowner was in Florida, and the furnace in his Cranston home failed. As a result, pipes burst, and the house was flooded, and then the water froze. The neighbors discovered the problem due to visible ice coming out the windows. This home was a three thousand-square-foot, seventy-year-old, immaculately maintained luxury residence. It had numerous custom high-end building components and materials, including gum wood interior trim, hand-made ceramic tiles, hand-wrought brass railings, and hand-made brick exterior.

The loss was promptly reported to Mayhem In-

surance Company, who brought in a remediation company for drying purposes. This was done, and paid directly by Mayhem. Issues arose as to both the extent of the loss in dollar terms as well as whether certain significant aspects of the loss were caused by the flooding and subsequent freezing and, thus, whether those conditions were covered as part of the loss. As the correspondence proceeded back and forth between Homeowner and Mayhem, it became clear that Mayhem disagreed with Homeowner on both the cost of repair as well as whether certain items of damage were covered at all. Homeowner had gotten an estimate from a high-end contractor, whose estimate far exceeded not only Mayhem's number but the policy limits as well. Homeowner promptly demanded an appraisal, but Mayhem responded by saying that certain items were not covered.

When matters reached an impasse, Homeowner sued Mayhem for damages in Superior Court. (At that time, the Supreme Court had not yet decided *Hahn v. Allstate*,⁴ which held for the first time that appraisal is mandatory, even where there is an issue as to whether certain items are covered or not based upon whether those items flowed from the covered event or not.) The litigation resulted in a long and tangled path in the courts, the lineaments of which are beyond the scope of the present article.⁵ At the end of that path, the Supreme Court ordered the parties to proceed to appraisal, noting that the demand for appraisal was timely and valid despite the subsequent delay in identifying and naming an appraiser. That led to the next twist.

The appraisal process in this case did not actually begin in earnest until 2023, but once begun, it quickly arrived at an award. The parties selected appraisers, who in turn agreed upon an umpire. The panel issued an award for actual cash value, and recognized that the carrier had made some payments before entering the appraisal process. The panel had to work off thirteen-year-old

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Seeking Law Related Education Program Attorney Volunteers: Update Your Preferences Today!

Your Bar Association supports law related education (LRE) for Rhode Island children and adults through three longstanding programs: *Lawyers in the Classroom* and *Rhode Island Law Day* for upper and middle school teachers and students, and the *Speakers Bureau* for adult organizations. Responding to LRE requests, Bar volunteers are contacted, based on their geographic location and noted areas of legal interest, to determine their interest and availability.

A new question has been added to the LRE form to inquire if potential volunteers speak another language besides their primary language. This addition will help us better match volunteers with language-specific speaking opportunities. Please ensure we have your updated preferences by filling out the LRE Volunteer Application today!

If you are interested in serving as a LRE volunteer, please go to the Bar's website at ribar.com, click on **FOR ATTORNEYS**, click on **LAW RELATED EDUCATION**, click on **ATTORNEY ONLY LRE APPLICATION**. All Bar members interested in serving as LRE volunteers, now and in the future, must sign up this year, as we are refreshing our database.

Questions? Please contact Director of Communications Erin Cute at ecute@ribar.com or **401-421-5740**.

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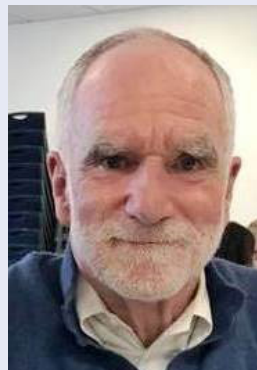
estimates, along with copious photographic evidence provided by Homeowner, which added appreciably to the complexity of their task. The appraisers and the umpire, after careful review of the claim, increased the replacement cost from Mayhem's original number of \$333,198.35 to \$514,987.57. The actual cash value, which is replacement cost reduced by depreciation, went from \$274,673.95 to \$420,332.52.

Once that part was completed, the appraisers and umpire tackled the issue of interest. Despite the almost century of combined experience in the field, none of them has ever been involved in a property damage claim where interest was awarded, and they were unclear as to its availability. As a result, they all agreed to ask the court for instructions, stating "that the panel defers to the Rhode Island Superior Court to rule on the award of prejudgment interest and the date from which interest shall accrue." That issue was then litigated in the Superior Court in the action revived by the order of the Supreme Court.

The basis asserted for the claim of interest is the ruling of the Rhode Island Supreme Court, in *Waradzin v. Aetna Casualty and Surety Company*⁶ that appraisal can be equated with arbitration.⁷ The Superior Court accepted that the appraisal process, at least in cases involving the appraisal language contained in the statutory standard fire policy, allowed for the imposition of interest.⁸ (See, also, *Union Mut. Fire Ins. Co. v. Pate*, specifically approving interest added to an appraisal award in the sum of 147% where the insurer delayed a resolution of the claim from 2003 to 2015.⁹)

The remaining issue for the court concerned the calculation of interest. The trial court followed the method prescribed by the Supreme Court in *Merrill v. Trenn* regarding underinsured motorist claims,¹⁰ and awarded interest from the date of loss to the date of the first payment, and interest on the amount net of that until the date of the second payment. The Court directed that interest be suspended during the four-year period from then until plaintiff named an appraiser, whereupon interest resumed (as a means of addressing defendant's claim of prejudice).

It can only be hoped, as this ruling becomes known amongst the bar, that the imposition of interest will perform its time-honored role of encouraging early settlements. Even better would be for carriers to fully compensate policy holders without a drawn-out fight or attempts to penny-pinch. It should be noted that our Supreme Court has held that the covenant of good faith and fair dealing mandates not only that covered losses be paid, but also that the carrier must undertake a com-



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petent and comprehensive investigation of the full extent of the damages suffered by the homeowner.¹¹ Fulfilling that duty would be better in the long run for all concerned.

Peter J. Comerford is a litigator with Coia & Lepore, Ltd.

John E. Anderson is an appraiser and construction consultant doing business as J.E. Anderson & Associates

ENDNOTES

¹ Jordan Z. Sasa “A Crisis in the Making: The Risks Posed by Freely Assignable Insurance Claims” Rhode Island Bar Journal Vol 72, No. 4, p.7 – 10.

² It is good to note that a wide variety of factors drive changes in premiums, and probably no factor exceeds that of climate change in terms of property damage claims, See, e.g., Zhang, F., Lin, N., & Kunreuther, H. (2023). “Benefits of and strategies to update premium rates in the US National Flood Insurance Program under climate change.” Risk Analysis, 43(8), 1627-1640. Other societal factors, such as the easy availability of firearms, also drive the increase in premiums. See, e.g., Lemaire, J. (2005). “The cost of firearm deaths in the United States: reduced life expectancies and increased insurance costs.” Journal of Risk and Insurance, 72(3), 359-374.

³ *Asermely v. Allstate Insurance Company*, 728 A.2d 461 (R.I. 1999).

⁴ 15 A.3d 1026 (R.I. 2011).

⁵ For more details, see *Raymond C. Romeo v. Allstate Property and Casualty Insurance Company*, 292 A.3d 1190 (R.I. 2023).

⁶ 570 A.2d 649 (R.I. 1990).

⁷ See *Grady v. Home Fire and Marine Insurance Co.*, 27 R.I. 435, 63 A. 173 (1906).

⁸ The federal district court, Judge Smith presiding, held that appraisal was not like arbitration but the policy in that case was not the standard fire policy. *Mullowney V. USAA Cas. Ins. Co.*, C.A. 22-404WES (D.R.I. June 27, 2023).

⁹ C.A. No. PC 2013-1620 (R.I. Super. Aug 02, 2016, Lanphear, J.).

¹⁰ 706 A.2d 1305 (R.I. 1998).

¹¹ *Houle v. Liberty Ins. Corp.* 271 A.2d 591, 595 (R.I. 2022). In that case, in which one of the present authors was an appraiser, the carrier’s adjuster found the loss was \$18,349.66. The homeowner’s team found the damages amounted to \$193,280.40. Entering the appraisal process, the carrier used an unlicensed engineer and unlicensed contractor to reach a determination that the amount of the loss was \$53,615.26. The homeowners filed suit for breach of contract and bad faith. The trial court granted a motion for judgment on the pleadings, which was reversed on appeal. The case is still pending, and discovery is proceeding, at least as is revealed on the portal. ◊

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Rhode Island Women Lawyers: Past, Present, & Future

This series was inspired by Roger Williams University School of Law's annual *Women in Robes* event and was created in alliance with their exciting new project, *The First Women*, which recognizes and honors the first women of the Rhode Island Bar.



Nicole J. Benjamin, Esq.

Taking every opportunity that comes her way is the immediate past president of the Rhode Island Bar Association, Nicole Benjamin's philosophy. This approach has led her on an unexpected journey that began with a chance encounter with the then Chief Justice of the Rhode Island Supreme Court while Benjamin was in college and has led her to her current role as a shareholder at the firm Adler Pollock and Sheehan and a trailblazer in the Rhode Island legal community.

As a native Rhode Islander studying journalism at the University of Rhode Island, Benjamin originally had plans to become a newspaper reporter. But a serendipitous dinner during her junior year at URI changed her trajectory completely. She had been honored with a Rhode Island Press Association Scholarship and was attending the awards ceremony at the Hotel Viking in Newport. At dinner, she was seated with then-Chief Justice Frank Williams, the keynote speaker. After receiving her award and giving an acceptance speech stating her hopes of becoming a hard-hitting journalist, Chief Justice Williams said to her, "That's nice, but you are going to law school." Chief Justice Williams added that if Benjamin did well in law school, he would consider her for a clerkship.

Benjamin kept in touch with Chief Justice Williams after the awards ceremony, sending him a thank you note for his encouragement, and later covering a story about him for the URI newspaper. After graduating from URI, she took Chief Justice Williams' advice about applying to law school, and, along with a letter of recommendation from him, headed off to Roger Williams University School of Law. She recalls the first year being challenging. Not only was she a student full-time, but she was also selling women's shoes at the now-defunct Filene's. "I literally made flashcards for final exams in the Warwick Mall parking lot," she recalls.

Benjamin performed so well during her first year of law school that then Dean David Logan awarded her a scholarship that, together with a scholarship previously awarded by the Rhode Island Bar Foundation, allowed her to leave her job at Filene's. This made it possible for Benjamin to participate in Moot Court and Law Review.

Benjamin's connection with Chief Justice Williams came around again when he, along with the rest of the Supreme Court, judged the final round of the Esther Clark Moot Court Competition, in which Benjamin was competing. During her argument, Chief Justice Williams kept leaning over to talk to Justice Goldberg, seated beside him. As she later learned, Chief Justice Williams was telling Justice Goldberg that he planned to offer the young superstar a clerkship after the competition, which he did.

During her two-year clerkship, Benjamin was assigned to a high-profile lead paint case pending before the Court. Attorney John Tarantino of AP&S was defense counsel, and Chief Judge John McConnell, then an attorney at Motley Rice, represented the plaintiffs. The case gave Benjamin a front-row opportunity to get to know them and the other attorneys involved. When the clerkship ended, with encouragement from Tarantino, Benjamin landed an associate position at AP&S, where he was a shareholder.

As a first-year associate there, Benjamin found herself craving the same collaborative environment she'd known as a clerk in Chief Justice Williams' chambers. "I really wanted to be part of the team," she recalls. "I'm a big believer that we are all better when we work together"



Jennifer L. Sylvia, Esq., Moses Ryan LTD, Providence

Suzannah Skolnik-Smith, Esq. (not pictured)
MBE Administrator, RI Division of Equity, Diversity,
& Inclusion, Providence

She frequently asked her colleagues to give her more work and ended up supporting Tarantino in particular, leading to a lasting collaboration and friendship with him.

In her fifth year as an associate, before social media took off, Benjamin decided to author an appellate blog for AP&S's website; only the site lacked that capability. So Benjamin took it upon herself to learn HTML to get the blog set up. It was so early in the days of online media that she recalls walking over to the Supreme Court building to take a photo using a "real" camera. After presenting the blog to AP&S's executive committee, she realized the firm could have hired an outside company to build the blog for her. "They all looked at me like, 'You know, we would have hired somebody to do that for you.'" The experience encouraged Benjamin to be less timid about asking her employer for the tools she needed to excel.

Benjamin's work on the appellate blog earned her recognition from peers beyond AP&S, and eventually Attorney Lauren Jones handed off to her the appellate section of RIBA's Recent Developments in the Law CLE program. Years later, Benjamin is still enthusiastic about appellate practice, having argued before the Rhode Island Supreme Court and the First and Third Circuits.

Another aspect of Benjamin's work she particularly values is the client-driven perspective. Benjamin has represented clients in an array of businesses, including aviation, giving her the opportunity to learn about trades she never would have otherwise. "Learning somebody else's trade, whether it's science or engineering or anything else, is very interesting to me," she says, "and something that lawyers, as good learners, can be very good at." One of Benjamin's clients is an engine manufacturer, who invited her to attend a so-called engine school to prepare for a case. "I'm not sure I can build an engine now," she says with a glimmer, "but I can get you close."

During every leg of her career, RIBA has been important to Benjamin, beginning with her early introduction to the RI Bar Foundation as a recipient of its distinguished Thomas F. Black, Jr. Scholarship when she was an undergraduate. As a brand-new lawyer, she joined the New Lawyers Committee, along with the Superior Court Bench

Alternative Dispute Resolution Committee Sponsors Arbitration Process CLE

The Rhode Island Bar Association's Alternative Dispute Resolution Committee is sponsoring a free-to-Bar-members, one-credit, virtual Committee CLE seminar. On **Wednesday, November 20, 2024, from 12:30 – 1:30 pm**, Lisa Romero, Vice President of the American Arbitration Association, will present *Arbitration: Administered or Ad Hoc – Dispelling Myths about the Arbitration Process*. This program will explore the differences between administered and ad hoc arbitration, reviewing key factors to consider when determining the best approach. Common misperceptions about the arbitration process will be addressed, along with important considerations for drafting effective dispute resolution clauses.

Space is limited! [Click here](#) to register for the program.

For any questions, please contact Communications Coordinator NaKeisha Torres atntorres@ribar.com or 401-421-5740.

Since this CLE approved meeting is open to all members of the Bar, lunch will NOT be provided, but attendees are encouraged to bring their own.

Please note that per the RI MCLE Commission, the Rhode Island Bar Association can only report the attendance of attorneys completing a minimum of 90% of this CLE program.

Supreme Court Bench/Bar Committee Sponsors Appellate Screening CLE

The Rhode Island Bar Association's Supreme Court Bench/Bar Committee is sponsoring a free-to-Bar-members, one-credit, hybrid Committee CLE seminar. On **Tuesday, November 12, 2024, from 12:00 – 1:00 pm**, Martha Newcomb, Esq., Chief Attorney of the Rhode Island Supreme Court Appellate Screening Unit, will present *An Afternoon with the Appellate Screening Unit*. Participants will gain a deeper understanding of the Unit's role in Rhode Island appellate litigation, learn best practices for filing Rule 12A statements, and navigate pre-briefing conferences more effectively.

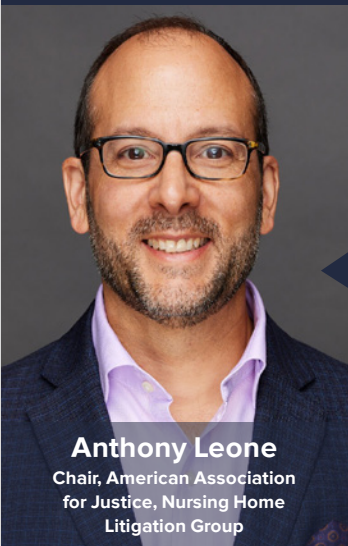
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Bar Committee. While Benjamin was a new associate at AP&S, Victoria Almeida, a shareholder there, was serving as Bar president and tapped Benjamin to edit her Bar Journal messages. The experience motivated Benjamin to strive toward Bar leadership herself someday. "Here at AP&S, we turn out Bar leaders," she says proudly, also referring to Tarantino and their colleague Susan Leach DeBlasio. "One of the things that made me want to practice at [AP&S] is their strong belief in engagement in the community."

Benjamin's desire to engage in the community and to encourage other lawyers to do the same is what drove her as Bar President last year. Her goal was to ensure that the next generation of the Bar remains as engaged as the last. With that in mind, Benjamin established the Leadership Academy, now in its second year. The nine-month leadership training program is designed to "foster professional growth and enhance leadership skills," according to RIBA's website. Benjamin says her goal for the program is to create a pathway to leadership within the Bar.

The seeds for the Leadership Academy were sewn during Benjamin's own experience with an organization with a similar goal, Leadership Rhode Island, from whose program Benjamin herself graduated in 2013 and on whose board she served for nine years, chairing it for three. In 2022, Leadership Rhode Island established an award in Benjamin's name, honoring a recipient who exemplifies her leadership qualities. "Listening and elevating others comes naturally to Nicole," Tarantino said when he founded the award. "She focuses less on being in charge, and more on caring for those in her charge." This year Tarantino presented the inaugural award to Reginald Lewis, executive director of the Greenleaf Center for Servant Leadership at Seton Hall University.

Another significant honor created in Benjamin's name, also by Tarantino, is the Nicole Benjamin Scholarship through the RI Bar Foundation. The first scholarship was awarded at this past annual meeting.

Although Benjamin has now passed the baton of Bar presidency, she has already grabbed a new leadership role. In May, the National Conference of Bar Presidents invited her to apply for its executive council. Benjamin submitted her application, interviewed, and was elected in August. She will serve a three-year term, providing leadership support to Bar presidents across the U.S.

Benjamin finds respite from her powerhouse schedule at her home in Bristol. "Truthfully, I take very little vacation time," she admits, although she enjoys listening to podcasts from the ABA and the Federation of Defense & Corporate Counsel. Instead of taking more frequent vacations, Benjamin and her husband have made their home their sanctuary, thanks to its proximity to the water. "I'm grateful to live in a place that feels very much like a vacation town," she says, adding that her eight- and six-year-old nieces know her home as "the fun house."

Benjamin's advice is to take every opportunity you can. She offers a sage caveat about burnout and overwork, but she says, "So much of what I've been able to accomplish in my career is because I said 'Yes' to every opportunity that came my way." ◇

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Michael A. Castner, Esq., *Jamestown*
Joanne C. D'Ambra, Esq., *Cranston*
Gregory S. Dias, Esq., *East Providence*
Tracy A. Loignon, Esq., *Warwick*
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Jack D. Pitts, Esq., *Pitts & Burns*
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VLP Mentor Program

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John J. Flanagan, Esq., *Warwick*

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For information and to join a Bar pro bono program, please contact the Bar's **Public Services Director Susan Fontaine** at sfontaine@ribar.com or **401-421-7758**. For your convenience, Public Services program applications may be accessed on the Bar's website at ribar.com and completed online.

PRO BONO PUBLICO RESOLUTION

In 2008, the Rhode Island Bar Association House of Delegates adopted the following policy and urges its members to act accordingly.

We urge our members to engage in public service. Recognizing the continuing need for legal assistance for economically disadvantaged citizens attempting to obtain legal services in our state, we as an association are mindful of the opportunity that is present for us to fulfill our moral, ethical and social duty to those who have limited or no access to the legal system. We therefore reaffirm our strong commitment to the delivery of legal services to the poor by strongly urging each member of this association to render pro bono publico legal services in accordance with Rule 6.1.

The association urges all attorneys, as well as law firms, government and corporate employers to support, endorse and adopt a Pro Bono policy that will encourage open participation by associates and employees.

Be it resolved that in order to implement the above statement of policy the association urges each member to join and participate in a Volunteer Lawyer Program of the Rhode Island Bar Association.

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The Rhode Island Data Transparency and Privacy Protection Act



Marc J. Soss, Esq.
FL Estate Planning
Lakewood Ranch, FL

“This requires entities to clearly disclose data collection practices, provide mechanisms for consumers to access, correct, and delete their personal data...”

On June 25, 2024, in response to concerns about data privacy and security in our digital age (how personally identifiable information is shared by businesses), the governor of Rhode Island transmitted a comprehensive privacy bill (SB 2500/ HB 7787), the Rhode Island Data Transparency and Privacy Protection Act (DTPPA), back to the state legislature. The Rhode Island Legislature enacted the DTPPA on July 1, 2024. Effective on January 1, 2026, the DTPPA provides privacy policy requirements to any commercial website conducting business or offering products and services to Rhode Island residents. The DTPPA does not apply to employee or business-to-business personal data.

The DTPPA applies to businesses that operate both inside and outside the state and collect information from Rhode Island residents who visit their websites. The law requires businesses to obtain explicit consent before collecting or sharing sensitive personal information and imposes strict guidelines for data breach notifications. This includes a retail business that collects names, email addresses, and purchase histories from its Rhode Island customers and those that store or analyze its data.

The DTPPA defines “personal data” as “any information that is linked or reasonably linked to an identified or identifiable human.” This includes names, addresses, email addresses, phone numbers, social security numbers, IP addresses, bank account information, medical information, and biometric and geolocation data.

Application

The DTPPA applies to: (i) any operator of a commercial website or internet service provider conducting business in Rhode Island or with Rhode Island customers. This applies regardless of the size of the company; and (ii) any for-profit entity that conducts business in Rhode Island or provides products or services targeted to Rhode Island residents and, during the immediately preceding calendar year, either: (a) controlled or processed the personal data of at least 35,000 Rhode Island customers; or (b) controlled or processed the personal data of at least 10,000 Rhode Island customers and derive more than 20% of their gross revenue from the sale of personal data.

The law further requires companies to fulfill

multiple critical obligations: (i) Transparency; (ii) Consumer Rights; (iii) Consent (explicit, informed consent from consumers); (iv) Data Security (security measures to protect personal information from unauthorized access), breaches, and other security threats; and (v) Breach Notification (prompt notification of affected consumers and relevant authorities in the event of a data breach). This requires entities to clearly disclose data collection practices, provide mechanisms for consumers to access, correct, and delete their personal data, implement procedures for consumers to easily opt-out of data collection and sharing, and allow a customer to request a company provide a copy of the customer’s personal data.

Sensitive Data

The DTPPA list of sensitive data includes racial or ethnic origin, religious beliefs, mental or physical health condition or diagnosis, sex life, sexual orientation, or citizenship or immigration status. It further precludes the processing of biometric or genetic information for the purpose of unique identification, the personal data of a known child (under 13), or precise geolocation data.

Non-Compliance

Companies found in violation of the DTPPA may face:

- (i) **Financial Penalties:** A violation “shall constitute a deceptive trade practice and result in fines between \$100 and \$500 per disclosure.
- (ii) **Legal Actions:** Non-compliance may result in a lawsuit from affected consumers and potential class-action litigation.
- (iii) **Reputation Damage:** Failing to adhere to the standards may result in reputation damage, loss of consumer trust and potential loss of business.
- (iv) **Operational Disruptions:** Compliance failures may result in increased scrutiny from regulators.

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Enforcement

Rhode Island's attorney general has exclusive enforcement power, there is no private right of action, and the law does not contain a right to cure provision. Penalties can be up to \$10,000 per violation under Rhode Island's unfair and deceptive trade practices statute.

Exempt Businesses and Agencies

Government entities, nonprofit organizations, institutions of higher education, financial institutions subject to the Gramm-Leach-Bliley Act (GLBA), national securities associations, and covered entities or business associates under the Health Insurance Portability and Accountability Act (HIPAA) are exempt from the DTPPA requirements. The DTPPA also exempts data subject to HIPAA, the Fair Credit Reporting Act, the GLBA, the Driver's Privacy Protection Act, the Family Educational Rights and Privacy Act, and the Farm Credit Act.

Obligations

The DTPPA requires all businesses to provide a website privacy policy, in a conspicuous location, on its website or online service platform that includes (i) all categories of personal information that are collected; (ii) all third parties to whom personal information has or may be sold; (iii) an active email address or other mechanism for a consumer to contact the company; and (iv) if the company engages in targeted advertising, disclosures about that processing. It is important to note that the law does not extend to offline collection, and there is no requirement to identify the purpose of the processing or the categories of personal data the controller shares with third parties.

In addition to the privacy policy requirements, entities that meet the size threshold of the DTPPA must adhere to the following obligations: (i) limiting the collection of personal data; (ii) the establishment, implementation and maintenance of administrative, technical and physical data security practices; (iii) customer consent before processing sensitive data; and (iv) a non-discrimination policy.

The DTPPA additionally requires controllers to conduct a data protection assessment for each of the following activities: (i) processing personal data for targeted advertising; (ii) selling personal data; (iii) processing sensitive data; and (iv) processing personal data for purposes of profiling.

Customer Requests

Under the DTPPA, data controllers must respond to a request within 45 days after receipt, with a 45-day extension available as reasonably necessary. If denied, the controller must provide a method to appeal the denial of a request and make the process conspicuously available. ◇

Windy City Wrap-Up

American Bar Association Delegate Report – Annual Meeting 2024



Robert D. Oster, Esq.
ABA Delegate and Past Rhode
Island Bar Association President

The Annual Meeting of the House of Delegates of the American Bar Association took place in Chicago, Illinois, on August 5–6, 2024. Attendees were addressed by Mary Smith, the ABA President, about her term in office and some of the significant issues facing the ABA. She highlighted her Native American heritage and spoke of the “uncomfortable truths” that we as lawyers must confront in our everyday lives and in the practice of law. She spoke of the Tulsa Massacre (the Black Wall Street) and reminded us that freedom is not necessarily free. She encouraged all attorneys to participate in the Task Force on American Democracy (DemocracyTaskForce@americanbar.org for more information), which recites simple steps we as lawyers can take to assure Democracy and Rule of Law in our upcoming state and national elections. She emphasized that there is no place for political violence in America. She further mentioned the impact AI, or artificial intelligence, is having on the practice of law and the challenges it presents.

She reiterated that the ABA is the home of all lawyers and that diversity is our strength. She mentioned the recent United States Supreme Court case on Harvard admissions practices and what criteria, racial and otherwise, can be used to admit applicants. Prior to that, I attended several meetings of which I am a member, namely, the Resolution Impact Committee, the ABA Membership Committee of which I am Rhode Island Chair, the New England Bar Association, the Crossroads Caucus, where the audience was addressed by Professor Jonathan Turley of national renown, and the State Bar Leaders Caucus. A very important ad hoc meeting of Rhode Island bar leaders who were in attendance in Chicago discussed increased cooperation and programming between the Rhode Island Bar and Roger Williams University School of Law. In the House of Delegates itself, we were able to vote on a number of different Resolutions of significance for attorneys in Rhode Island and elsewhere in the country. I was also able to attend a groundbreaking program called “Lawyers Without Rights,” which describes the role of lawyers and Antisemitism in Nazi Germany and the intense pressure on the Bar of Germany to stamp out due process. A member of the Federal Bar of Germany

spoke to us about authoritarianism and today’s challenges and the lessons to be learned from that period in German history that can be applied to today.

The Delegates were able to witness the swearing-in ceremony of 20 new citizens by Chief Judge Kendall of Chicago. I had goosebumps thinking of the number of countries these new citizens came from and the freedom that citizenship here meant to them, while many born here do not appreciate our fragile yet resilient democracy and the rights it affords.

In addition to its policy-making role, the ABA governs law school accreditation and paralegal education and practices, and we were able to pass meaningful rule changes to that process. We were addressed once again by John G. Levy, the Executive Director of Legal Services Corporation, of which the ABA has been a huge ally for the 50 years of its existence. He pointed out that Legal Services Corporation has 130 grantees, 900 offices, and helped 75 million families with legal problems. The Corporation and the ABA are committed to making civil legal services available to all without regard to income.

Considerable time was devoted to a panel discussion on how to build trust between generations of lawyers, how to interface with GenZ and Millennial lawyers, and the hiring process for new attorneys and their compensation. We have to work with “digital natives,” as some of these younger lawyers are more adept at electronic communication than face-to-face or telephonic communication. Academic credit for field placements, flexible work arrangements, and credit for external employment is the new normal for law students. The ABA’s Young Lawyer Division and Law School Student Division have been very active in promoting Resolutions geared to their way of thinking.

Resolutions supporting interstate admission of attorneys and their spouses who are attorneys

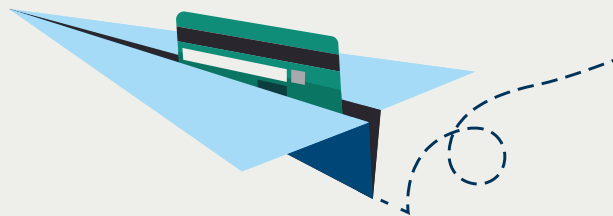
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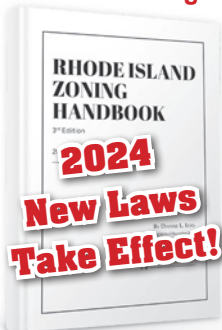


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who are serving in the military were supported. Other Resolutions regarding domestic violence, homelessness (see City of Grant's Pass v Oregon), and gun violence were also passed. In addition to Resolutions germane to the practice of law, there were many Resolutions devoted to the rights of Hazara people in Afghanistan, the rights of native Tibetans, the Equal Rights Amendment, the Dobbs decision, and many other human rights issues not necessarily germane to the everyday practice of law.

I find the American Bar Association to be a rewarding professional experience, and I hope that each person who reads this column will consider joining. The privilege I have to represent the Rhode Island Bar as its Delegate to the American Bar Association has been an amazing journey that has benefited my professional life. If any member wishes to discuss further ABA practice or policy, I am pleased to discuss it. ◊

Bar Association Mentor Programs

Our Bar Association is proud to offer mentorship opportunities that foster professional development, strengthen collegiality, and provide valuable guidance and support in the practice of law. Experienced practitioners can share their wealth of knowledge and experience with mentees, and mentees receive a helping hand as they begin or revitalize their legal careers. Over the years, the Bar Association has matched numerous new members with seasoned attorneys, and we would like to refresh our directory.

For traditional mentoring, our program matches new lawyers one-on-one with experienced mentors in order to assist with law practice management, effective client representation, and career development. If you would like to volunteer and serve as a mentor, please visit ribar.com, select the **MEMBERS ONLY** area, and complete the **Mentor Application** form and return it to the listed contact.

As an alternative, the Bar Association also offers the Online Attorney Information Resource Center (OAR), available to Bar members through the **MEMBERS ONLY** section of the Bar's website, to receive timely and direct volunteer assistance with practice-related questions.

If you have any questions about either form of mentoring, or if you would like to be paired with a mentor through our traditional program, please contact Director of Communications Erin Cute at ecute@ribar.com or 401-421-5740.

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All dates and times are subject to change.

Seminars are always being added to the CLE schedule, so visit the [CLE calendar](#) for the most up-to-date information.

November 1
Friday
*

Food for Thought – The Parental Estrangement Model: An Alternative to Parental Alienation Syndrome

12:00 – 2:00 pm, 1.5 credits + 0.5 ethics
In-person at the RI Law Center, Cranston (includes lunch)
Also available as a live webinar!

November 6
Wednesday

Legal Ethics Is No Laughing Matter
1:00 – 2:00 pm, 1.0 ethics
LIVE WEBINAR ONLY

November 12
Tuesday

The Price is Right: Why & How Creating a Rate Sheet is the Most Important Thing You Can Do for Your Law Firm
1:00 – 2:00 pm, 1.0 credit
LIVE WEBINAR ONLY

November 15
Friday
*

Recent Developments in the Law 2024
9:00 am – 3:30 pm, 6.0 credits
In-person at the RI Law Center, Cranston (includes light breakfast and lunch)
Also available as a live webinar!

November 16
Saturday

The 2024 Ethy Awards
11:00 am – 1:00 pm, 2.0 ethics
LIVE WEBINAR ONLY

November 20
Wednesday
*

Real Estate Boot Camp
1:00 – 5:00 pm, 4.0 credits + 0.5 ethics
In-person at the RI Law Center, Cranston
Also available as a live webinar!

November 21
Thursday

The Search for Truth: Using AI in Legal Discovery in Legal Discovery
1:00 – 2:00 pm, 1.0 credit
LIVE WEBINAR ONLY

November 26
Tuesday

It's Not the Fruit, It's the Root
1:00 – 2:00 pm, 1.0 ethics
LIVE WEBINAR ONLY

December 5
Thursday
*

No Double-Dipping: Evolving Rules for Conflicts of Interest in Real Estate Transactions
2:00 – 4:00 pm, 2.0 ethics
In-person at the RI Law Center, Cranston
Also available as a live webinar!

December 12
Thursday
*

The Rhode Island Wrongful Death Act and Recent Amendments
2:00 – 4:00 pm, 1.5 credits + 0.5 ethics
In-person at the RI Law Center, Cranston
Also available as a live webinar!

December 14
Saturday

The 2024 Ethy Awards
11:00 am – 1:00 pm, 2.0 ethics
LIVE WEBINAR ONLY

December 17
Tuesday

Navigating the Internet Marketing Minefield: How to Avoid Ethical Violations
12:00 – 1:00 pm, 1.0 ethics
LIVE WEBINAR ONLY

December 18
Wednesday

Engage!: Hands-on AI Training for Modern Legal Practice
10:00 am – 5:00 pm, 6.0 credits
LIVE WEBINAR ONLY

December 23
Monday

Chat OMG: The Ethical Pros and Cons of Using AI
1:00 – 2:00 pm, 1.0 ethics
LIVE WEBINAR ONLY

December 31
Tuesday

Walking the Diversity Talk: Making Greater Strides Toward the Elimination of Bias
3:00 – 4:00 pm, 1.0 ethics
LIVE WEBINAR ONLY

* New lawyer pricing available for members admitted after January 2019! Visit the [CLE calendar](#) on our website for more details.

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Guide to State Contracting

Continued from page 9

The GC Addenda is described in Section 13.34 of the General Conditions. The GC Addenda is considered to be contract terms and not regulations. See 220-RICR-30-00-13.34(A & B). The GC Addenda are as follows:

GC Addendum A – General Insurance Requirements⁵ – Applies to all procurements and includes several insurance schedules which may apply depending on the service being provided.

GC Addendum B – Information Technology Requirements – Applies to computer hardware, software and hosting related procurements. The State is working on an updated template which should be available soon and posted on Ocean State Procures (“OSP”), the State of Rhode Island’s eProcurement system for vendor registration, solicitations, and awards.

GC Addendum C – Public Works Project Requirements (AIA Agreements)⁶ – Applies to Public Works Projects (discussed in detail below).

GC Addendum D – Agency Specific Federal Funding Requirements – Provides any requirements imposed by federal partners. – Applies to all procurements involving federal funds where the federal government imposes additional terms and conditions. This addendum may vary depending on the department and the requirements of its federal partner.

GC Addendum E – Standard Business Associates Agreement Requirements – Applies to procurements involving HIPPA. Each agency has its own form of BAA, which would be utilized and incorporated.

GC Addendum F – Special Requirements – Requirements not otherwise addressed in the General Conditions or GC Addenda above – This Addendum is the catchall. In the event that there are terms or conditions that are not included in the General Conditions or in any of the other addenda, any special conditions can be included here. Additionally, this addendum may also be used to incorporate a detailed scope of work with the vendor, including, but not limited to, deliverables, milestones, and special payment terms.

The General Conditions (base terms), applicable GC Addenda (added terms), and other incorporated items (the solicitation and the proposal/bid) constitute the entire agreement between the State and the vendor for the purchase of goods or services other than public works construction.

B. Insurance Requirements

Because GC Addendum A, Insurance, is incorporated in every contract and is often a sticking point with vendors, this section will elaborate on this requirement. GC Addendum A includes the following schedules:

- A1: General Requirements Schedule
- A2: Professional Services Schedule
- A3: Information Technology Schedule
- A4: Public Works Schedule
- A5: Department of Transportation Projects

If the contract is being procured through a competitive procurement, the solicitation will generally state which schedule(s) and which specific policies may apply. If a vendor is unsure of the specific insurance requirements, however, they should follow the instructions in the solicitation and email the Division of Purchases for clarification.

The insurance requirements are one of the most common areas for delay in the contracting process. Vendors often ignore

these requirements until they receive a tentative selection letter from the Division of Purchases requesting insurance certificates. Then this requirement sinks in. Issues can be avoided and possibly even negotiated (discussed below) if areas of concern are raised at the front end of the process.

In some cases, a vendor may be unable to obtain the required insurance. If that is the case, the vendor should directly address the issue as follows: 1) in the form of a vendor question during the vendor Q&A during the procurement; and/or 2) at a pre-bid conference if there is one; and 3) in the vendor's bid or proposal as an alternative or qualified term (discussed below). Addressing insurance issues after-the-fact leads to delay and may also lead to a withdrawal of tentative selection by the State.

C. Public Works Projects

The State of Rhode Island engages in a significant number of public works projects at any one time, including construction of new buildings as well as maintenance, repair, and renovation of existing buildings. The Department of Administration Division of Purchases manages the procurement of most state and agency public works projects in the State of Rhode Island, pursuant to R.I. Gen. Laws §§ 37-2-1 *et seq.* and the regulations at 220-RICR-30-00 promulgated pursuant to R.I. Gen. Laws § 13.7. Contracts for these projects are typically awarded through the competitive bidding process based on several different project delivery methods common in the construction industry.

Project Delivery Methods

“Design-bid-build” is the traditional and still most commonly utilized method in construction procurement. This method is linear and consists of three distinct phases completed primarily sequentially: 1) the design phase; 2) the bid phase; and 3) the build phase. Construction commences only upon completion of the design process and acceptance of the bid. Until fairly recently, the State used this method almost exclusively. In this type of procurement, the State procures the services of an architect or engineer to design a project (a “design agent”), then the design agent provides a comprehensive set of construction drawings and specifications that the State uses to solicit bids. General contractors then submit proposals with their best price (after consultation with subcontractors for various aspects of the project) for materials and labor and their built-in fee, and the State awards the project to the lowest responsive bid price. R.I. Gen. Laws § 37-2-18(h). There can be wide variations in the bid proposals from contractors with this method. Typically, the State also retains the services of the design agent to administer and oversee the construction services of the contractor. One key component of this method is that the State enters into a direct contractual relationship with the design agent who, is accountable exclusively to the State.

The “design-build” method, ideally, compresses the process and streamlines communication, collaboration, and coordination. In this project delivery method, the State solicits and awards one contract—rather than two (one for the design agent and one for the contractor)—to design and construct the project. In this scenario, the design agent and the contractor will work collaboratively, the State has one point of contact for questions and input for the project, and the contractor can begin construction on certain phases of the project once the design agent has completed its design for each of those phases. Since this method integrates the design and construction services, the contract provides the State with single source responsibility.

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The Rhode Island Bar Association's Continuing Legal Education (CLE) programming success relies on dedicated Bar members who volunteer hundreds of hours to prepare and present seminars every year. Their generous efforts and willingness to share their experience and expertise help to make CLE programming relevant and practical for our Bar members. We recognize the professionalism and dedication of all CLE speakers and thank them for their contributions.



Below is a list of the Rhode Island Bar members who have participated in CLE seminars during September and October.

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Member Benefit Spotlight

vLex Fastcase Rollout: Upgraded Legal Research for RIBA Members

As mentioned in the last issue of the *Journal*, Fastcase has merged with vLex, a global legal intelligence company. By the end of the year, the Rhode Island Bar Association will launch an upgraded member benefit program that continues to offer the same free core services with several notable improvements.

The enhanced vLex Fastcase platform will provide free access to primary law collections, including Rhode Island caselaw, statutes, the Constitution, Attorney General Opinions, Administrative Code, and court rules. Members can search by citation, keyword, or natural language query to retrieve relevant legal authorities.

Additionally, members will have access to treatises, practice guides, legal forms, and secondary sources. Rhode Island-specific guides cover civil procedure, foreclosure law, legal malpractice, title standards, and trust and estate practice, alongside national materials on bankruptcy, employment law, and intellectual property. Rhode Island Bar Journal articles will also remain accessible.

A key upgrade includes **Vincent AI**, vLex's research assistant, which provides automated headnotes, case summaries, and links to related materials. Advanced features, such as answering legal questions and conducting 50-state surveys, **will be available**

through a subscription add-on. The new **Cert citator** will also flag negative case treatments, with broader coverage and expert editorial review.

The transition will happen in three stages: Starting November 6, 2024, members will have access to the vLex Fastcase platform. Initially, members will land on Fastcase but can switch to the new platform. After 30 days, vLex Fastcase will become the default, with an option to revert to Fastcase 7 in user settings. A new landing page is set to launch in December.

To support this transition, a free, non-credit webinar will be held on **November 21, 2024, from 12–1 PM via Zoom**, covering the platform's new features, including Vincent AI and Cert. We encourage members to attend. [Click here](#) to register.

This premium service, valued at \$1,140 annually, remains free for Rhode Island Bar Association members. Stay tuned for further updates as we approach the full rollout.



The “construction manager at risk” (“CMAR”) project delivery method has been available to the State for public works projects only since 2011. R.I. Gen. Laws § 37-2-27.1. In this method, for qualified projects in excess of \$5 million, the State solicits the services of a construction manager to oversee the entire project, from preconstruction to design, bidding, and construction, and will only select a CMAR after a comprehensive evaluation of the contractor’s previous experience. The CMAR contract will include a guaranteed maximum price, and the construction manager will be “at risk,” or responsible, for any excess costs and may also be able to share in any savings if the project is completed for less than that price. In order to solicit bids for a construction manager at risk, the State must determine in a written memorandum that the traditional method of contracting is not practicable and will not result in the best value for the state. R.I. Gen. Laws § 37-2-27.1(a). The CMAR contract will require the CMAR to provide a number of essential services even during the design phase of a public works project, such as constructability reviews, cost estimates, value engineering, and scheduling. The CMAR will serve as general contractor during the construction phase and bid out all the materials, equipment, and subcontracts necessary to deliver the project on time and on budget.

AIA Documents

The American Institute of Architects (“AIA”) has developed almost 200 comprehensive contracts and other documents that define the relationships and terms and conditions involved in design and construction projects and are recognized as the in-

dustry standard by architects, contractors, owners, consultants, and attorneys. These contract documents are organized into two categories: 1) by “families” based on the type of project or project delivery method; and 2) by “series” based on the use of the document.

The State of Rhode Island has customized the standard AIA documents and requires the execution of the applicable contract for every public works project that it solicits. The documents define the relationships among the State, design agents, contractors, and consultants who would like to provide services for design and construction for public works projects in this State and include the terms and conditions that will govern the provision of those services. One advantage of these documents is that they are very common in the construction industry and integrate well with construction documents most architects and contractors are already using. AIA documents for particular types of projects or delivery methods are coordinated and consistent in their treatment of the several functional and legal relationships. Another advantage is that architects and contractors can review them before they submit a bid so they will understand what their rights and responsibilities will be if their bid is accepted.

The adoption and use of the customized standard AIA contracts creates certainty and fairness for all parties, ensures compliance with Rhode Island law, protects the State’s interest, and eliminates the time and cost of negotiation. They are also less complicated to complete as they limit the number of blanks and fill points. This article will review the main AIA contracts used by the State.⁸ Once fully executed by the parties, none of them

is binding until the issuance of a purchase order by the State.

State of Rhode Island Version of AIA Document A101® – 2017 Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

The Rhode Island version of AIA Document A101® – 2017 is appropriate for large or complex projects where the price paid the contractor is fixed in advance and is the mainstay of most public works projects in Rhode Island. It incorporates, by reference, Rhode Island AIA Document A201® – 2017, General Conditions of the Contract for Construction.

The agreement's key basic provisions cover the parties, the work to be performed, the start and completion dates, retainage required by the State, any liquidated damages, payment schedule, the contact information for the State's and contractor's representatives for the project, insurance and bonding requirements, the list of the several documents that comprise the "contract" with the State, the contractor's representations, and dispute resolution procedures.

The Rhode Island version includes a few local twists, such as the provision that: 1) the use and identity of subcontractors must be approved by the State; 2) the State may deduct from any payments due under the contract the amount of any obligations the contractor owes the State, such as unpaid taxes; 3) mechanics liens are not permissible on public works projects with the State; 4) certain remedies are limited against the State; and 5) final payment is contingent upon, among other requirements, the submission to the State of all close-out documents such as warranties, manuals, and "as-built" plans. A key provision is the requirement that only the State's representative listed in the agreement may give consent on behalf of the State. In addition to termination for convenience without cause, this agreement, like all contracts with the State for public works projects, may be terminated: 1) in the event of the unavailability of appropriated funds; or (ii) in the absence of a determination of continued need. Dispute resolution procedures are also explicitly detailed, beginning with an initial review of any claim by the State Purchasing Agent rather than the design agent, then mediation, followed, if necessary, by an action under the "Public Works Arbitration Act," R.I. Gen. Laws §§ 37-16-1 *et seq.* The contractor also makes certain representations and warranties that survive the final completion of the project.

State of Rhode Island Version of AIA Document A104® – 2017 Standard Abbreviated Form of Agreement Between Owner and Contractor

The Rhode Island version of AIA Document A104® – 2017 is appropriate for projects of limited scope and complexity, where payment is based on either a stipulated sum or the cost of the work plus a fee, with or without a guaranteed maximum price. This agreement is a standalone agreement and does not incorporate Rhode Island AIA Document A201® – 2017, General Conditions of the Contract for Construction. This Because the agreement does not incorporate Rhode Island AIA Document A201® – 2017, General Conditions of the Contract for Construction, this agreement covers not only the basic terms of the AIA Document A101® – 2017 Standard Form of Agreement between Owner and Contractor, but also some additional "conditions" such as: 1) indemnification by the contractor; 2) change orders; and 3) correction of the work.

State of Rhode Island Version of AIA Document B101® – 2017 Standard Form of Agreement Between Owner and Architect — Owner and Design Agent Edition

The Rhode Island version of AIA Document B101® – 2017 is



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the standard form of agreement between the State and Design Agent for building design services and construction contract administration by an architect or engineer. The agreement delineates three types of services: basic, supplemental, and additional. Basic services cover five phases: schematic design, design development, construction documents, procurement, and construction. Supplemental services may be identified prior to execution of the agreement as the design agent's responsibility that are not included as Basic Services. Additional services are services that may arise during the progress of the project. This agreement is suitable for use with a variety of compensation methods and is intended to be used in conjunction with Rhode Island AIA Document A201® – 2017, General Conditions of the Contract for Construction.

In addition to the actual design of the project, the design agent's services include: 1) review of bids from contractors; 2) review shop drawings; 3) perform site inspections; 4) review the contractor's requests for payment; and 5) review requests for change orders. The design agent also determines when the project has reached substantial completion and then final completion.

The Rhode Island customized version of this agreement also includes a few local twists, such as the provision that the design agent must: 1) perform its services consistent with the best interests of the State and the user agency; 2) seek the State's approval

for certain decisions typically reserved for the design agent, such as prior authorization for payment; 3) be responsible to reject nonconforming work; 4) indemnify the State for any professional liability; and 5) attend two meetings post-final completion. In addition to termination for convenience without cause, this agreement, like all contracts with the State for public works projects, may be terminated: 1) in the event of the unavailability of appropriated funds; or (ii) in the absence of a determination of continued need. Dispute resolution procedures are also explicitly detailed, beginning with an initial review of any claim by the State Purchasing Agent, then mediation, followed, if necessary, by an action under the "Public Works Arbitration Act," R.I. Gen. Laws §§ 37-16-1 *et seq.*

State of Rhode Island Version of AIA Document B102® – 2017 Standard Form of Agreement Between Owner and Architect without a Predefined Scope of Architect's Services — Owner and Design Agent Edition

The Rhode Island version of AIA Document B102® – 2017 is a standard form of agreement between the State and a design agent that contains many of the same terms and conditions as the Rhode Island version of AIA Document B101® – 2017 and compensation details but no scope of services. The agreement permits the scope of services to be inserted into Article 1 or attached as an exhibit and, therefore, provides a significant amount of freedom to tailor the specific services sought by the

State. It is suitable for a variety of compensation methods.

State of Rhode Island Version of AIA Document B104® – 2017 Standard Form of Agreement Between Owner and Architect

The Rhode Island version of AIA Document B104® – 2017 is an abbreviated version of B101® – 2017 and is intended for use on construction projects of limited scope and complexity. The agreement contains a compressed form of basic services with three phases: design, construction documents, and construction and may be used with a variety of compensation methods. This version is intended to be used in conjunction with the Rhode Island version of A104™ – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor, which it incorporates by reference.

State of Rhode Island Version of AIA Document A201® – 2017 General Conditions of the Contract for Construction

The Rhode Island customized version of this document pairs with the Rhode Island version of the AIA Document A101® – 2017 for the standard design-bid-build project delivery method and is used with a number of other AIA contract documents. An integral component of the contract for construction for a large project, this document delineates the rights, responsibilities, and relationships of each of the State, the architect, and the contractor during the construction phase of the project. The “General Conditions” bridge the gap between the separate contracts the State enters into with the architect and the contractor and provide a roadmap for project management and effective communication among the key participants. Though not a party to the contract for construction between the State and the contractor, the design agent participates in the preparation of the contract documents and performs construction phase duties and responsibilities described in detail in the General Conditions of the Contract for Construction. This document also has a number of local key provisions, such as: 1) retention of three (3) percent of the contract sum until 30 days after final completion if the contractor has no regular place of business in Rhode Island; 2) the warranty that materials and equipment will be of first quality, prime manufacture, and new, and the work will be free from defects; 3) a cap on overhead and profit; 4) the requirement for the State’s written consent of any change order or construction change directive; and 5) the contractor has certain obligations after final completion.

Now that you have a better understanding of what the terms and conditions are for State contracts, the next step is understanding the contracting process and how to potentially negotiate any terms and conditions that may be a concern.

III. Conclusion

Being familiar with the General Conditions and the GC Addenda (especially GC Addendum A (Insurance) and GC Addenda C (Public Works (AIA)), is important in order to appreciate the contractual requirements of doing business with the State. Vendors who intend to raise issues and concerns regarding these terms should do so as soon as possible in the procurement process, preferably during the pre-bid period (during Q&As and/or a pre-bid conference). Also, if possible, the vendor should prioritize and limit areas of main concern where there is significant business risk or cost involved. Understanding the contractual terms with the State and knowing how and when to negotiate these terms is essential to protecting your client’s interest. Good luck!

ENDNOTES

- 1 This article was co-authored by Daniel W. Majcher and Susan Leach DeBlasio, both of whom bring extensive experience and unique perspectives to the topic. Daniel, who has served the State of Rhode Island for nearly 20 years, would like to extend a special thank you to his colleague, Mary-Rose Pellegrino, Esq., for her thoughtful feedback on this piece. Susan, a distinguished attorney at Adler Pollock & Sheehan P.C. and past President of the Rhode Island Bar Association, also shares her deep expertise in corporate and health care law. Their combined insights reflect the spirit of professional collaboration and mentorship that our Leadership Academy program seeks to foster.
- 2 In addition to this article, attorneys will find helpful guides and checklists on the Rhode Island Department of Administration, Division of Purchases’ website at: <https://ridop.ri.gov>.
- 3 Vendors should be registered in OSP in advance so that applicable commodity/service codes can be identified for the vendor, so that the vendor receives automatic notification when a suitable procurement is posted. See <https://ridop.ri.gov/ocean-state-procures-osp/osp-vendor-registration> for more information about registering.
- 4 Available at: <https://rules.sos.ri.gov/Regulations/Part/220-30-00-13>
- 5 GC Addendum A (Insurance Requirements) is available at <https://ridop.ri.gov/about-us/procurement-statutes-and-regulations>.
- 6 The State’s custom AIA agreements (GC Addendum C) are available here: <https://ridop.ri.gov/vendors/public-works-aia-custom-state-rhode-island-documents>.
- 7 In addition, the Rhode Island Department of Transportation (RIDOT) maintains its own substantial set of standard bid requirements and technical specifications available at <https://www.dot.ri.gov/business/bluebook/index.php>, colloquially known as the “Blue Book,” last amended in February 2024.
- 8 A list of custom Rhode Island AIA documents is available at: <https://ridop.ri.gov/vendors/public-works-aia-custom-state-rhode-island-documents>. ◊

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In Memoriam

Hon. Arthur G. Capaldi

The Honorable Arthur G. Capaldi, 82, died on August 11, 2024. He was the husband of Patricia A. (Rozum) Capaldi. Born in Providence, he was the son of the late Arthur W. and Philomena (Amore) Capaldi. Judge Capaldi earned a Bachelor of Science degree in history and political science from Providence College in 1965 and received his Juris Doctor from Suffolk University Law School in 1968. Throughout his 55-year law career, Judge Capaldi held numerous positions, including Coventry Assistant Town Solicitor, Coventry Town Solicitor (twice), legal advisor to the Coventry School Committee, Coventry Sewer Authority, Anthony Fire District, and Utility Contractors of Rhode Island. He also served as legal advisor to the Coventry Housing Authority for over 40 years and as a special education hearing officer for the State of Rhode Island for over 30 years. For the last 34 years, he served as the Coventry Municipal Court Judge and was President of the Municipal Court Association in 2000. Judge Capaldi was a significant contributor to the creation of Coventry's current Home Rule Charter and Code of Ordinances. He was the author of *Thirty Missions to Marie* and a history of Coventry's town charter. He is survived by his children, Alisa M. Capaldi of Coventry, Justin A. Capaldi and his wife Kristen of Glocester, and Kristen C. Creighton and her husband Thomas of Cranston; his brother, Steven Capaldi; and several grandchildren. He was predeceased by his sister, Ella Badessa.

Edward P. DeFalco, Esq.

Edward P. DeFalco, 77, died on Saturday, May 18, 2024. Born in Providence, he was a son of the late Joseph and Ursulla DeFalco. After graduating from Mount Pleasant High School, Edward received his bachelor's degree from Providence College and received his J.D. from Boston University. Edward was a real estate attorney who retired in 2006 but remained actively involved in his business until his passing. Throughout his life, he donated to many charities for children in need. Edward is survived by his two sisters, Carol and Joanne, and five nephews. He was predeceased by his brother, Joseph DeFalco.

Jeremiah R. Leary, Esq.

Jeremiah (Jerry) Richard Leary, 83, of Little Compton, died on August 30, 2024. He was the husband of Elizabeth (Lisa) Ann Donohue. Born in Hartford, CT, he was the only child of Mary Sullivan Leary and Richard Bernard Leary. Jerry grew up in Tiverton, attended De La Salle Academy in Newport, and graduated from Holy Cross College. He earned his law degree from the University of Virginia before enlisting in the Marine Corps. He later served in the Navy Reserves, achieving the rank of Lt. Commander. Jerry began his legal career in Newport and served two terms in the Rhode Island State Senate, helping to improve public safety, including the installation of a traffic light at Tiverton's Four Corners. For six decades, Jerry practiced law at the Tiverton firm he co-founded with Ray Holland and later joined by Stetson Eddy, focusing on family, property, and small business law. In addition to his wife, Jerry is survived by his four sons: Richard and his wife Erin, John and his wife Kate, Jeremiah and his wife Daphne, and Matthew and his wife Shay as well as seven grandchildren.

Robert B. Mann, Esq.

Robert (Bob) Barney Mann, 76, died on September 9, 2024. He was the husband of Suzanna J. Mitchell. Born in Bremerhaven, Germany, he was the son of Lionel and Miriam Mills Mann. Bob enrolled at Yale University at 16, graduating in 1968, and enlisted in the Army, serving as a Lieutenant in Military Intelligence in Vietnam, where he earned a Bronze Star. After his discharge, he earned a J.D. from Yale in 1973 and began his legal career as a VISTA attorney with Rhode Island Legal Services. He co-founded Mann & Roney and later formed Mann & Mitchell with his wife, Suzanna. For over five decades, Bob defended the rights of marginalized individuals in Rhode Island. His achievements

were widely recognized throughout his career, including receiving the RI Bar Association's Ralph P. Semonoff Award for Professionalism in 1998. Rhode Island Monthly named him a "quintessential good guy" and one of Rhode Island's best lawyers multiple times. He was listed as a "Super Lawyer" from 2007 to 2024 and received the Richard M. Casparian Award from the RI Association of Criminal Defense Lawyers in 2007. The following year, he earned the Neil J. Houston Award for his dedicated service and contributions to the criminal justice profession and public interest. In 2015, Bob received an honorary degree from Roger Williams University School of Law, which also recognized him as a Champion of Justice in 2023. He was the first recipient of the Olin W. Thompson, III Justice Award from the United States District Court in 2022. Bob was a Fellow with the American College of Trial Lawyers and a member of the National Inns of Court. In addition to his wife, Bob is survived by his stepdaughters, Susannah and Samantha Cotter, and his granddaughter. He was predeceased by his sister, Elizabeth.

Peter Joseph McGinn, Esq.

Peter Joseph McGinn, 88, died on Saturday, September 7, 2024. He was the husband of Virginia (Goggin) McGinn and was the son of the late Frank and Elizabeth (Kelley) McGinn of Riverside. Peter graduated from LaSalle Academy, the College of the Holy Cross, and Harvard Law School. Following graduation, he served in the Army as a Captain in the Judge Advocate General's Corps (JAG) in Washington, D.C. After his military service, Peter returned to Rhode Island, eventually settling in Warwick Neck, where he lived for 45 years. He was a partner at the former law firm of Tillinghast, Licht & Semonoff for nearly 50 years. Peter was active in several organizations, serving as past President of Warwick Country Club, a member of the President's Council at the College of the Holy Cross, Chairman and member of the Board for Bishop Hendricken High School, a longtime religious education teacher and trustee of St. Kevin's Parish, and a member of the Rhode Island Judicial Nominating Committee. In addition to his wife, Peter is survived by his daughters, Virginia McGinn Springer (late Stephen) of Barrington and Christine McLaughlin (Daniel) of Belmont, MA; several grandchildren; his brother Joseph McGinn (Judith); and his sister Mary McCarthy (Thomas). He was predeceased by his brothers Frank McGinn (late Eileen) and Thomas McGinn (former sister-in-law Patricia).

Melvin L. Zurier, Esq.

Melvin (Mel) L. Zurier, 95, died on Friday, August 23, 2024. He was the husband of the late Janet (Rosen) Zurier and the son of the late Louis and Frances (Gordon) Zurier. Born in Providence, Mel was the first in his family to pursue higher education, attending the Henry Barnard School, Classical High School, and Harvard College. He obtained a commission in the Air Force Reserve while at Harvard and deferred service to attend Harvard Law School. After graduating, Mel served in the Judge Advocate General Corps of the U.S. Air Force, with assignments including Sonderstrom Air Force Base in Greenland and San Francisco, where he retired as a Colonel in the Air Force Reserve. Mel returned to Rhode Island in 1957, working as an attorney and later serving as Executive Counsel to Governor John Notte. In 1962, he co-founded the law firm Temkin, Merolla & Zurier, where he practiced for nearly 20 years, later joining Levy, Goodman, Licht & Semonoff until 2008. Mel was Chairman of the Rhode Island Ethics Commission, President of Temple Beth El, and President of the Rhode Island Jewish Historical Association. He was involved with various charitable, political, and educational organizations. Mel is survived by his four children: Rebecca Zurier (Thomas Willette) of Ann Arbor, MI; Samuel Zurier (Lauren) of Providence; Benjamin Zurier (Linda Movish) of New York City; and Sarah Zurier (Jonathan Bell) of Providence; eight grandchildren; and many nieces and nephews. He was predeceased by his sisters Hilda Glickman and Rosalind Gever.

Caption This! Contest

We will post a cartoon in each issue of the *Rhode Island Bar Journal*, and you, the reader, can create the punchline.

How It Works: Readers are asked to consider what's happening in the cartoon above and submit clever, original captions. Editorial Board staff will review entries, and will post their top choices in the following issue of the *Journal*, along with a new cartoon to be captioned.

How to Enter: Submit the caption you think best fits the scene depicted in the cartoon above by sending an email to ecute@ribar.com with "Caption Contest for November/December in the subject line.

Deadline for entry: Contest entries must be submitted by December 1st, 2024.

By submitting a caption for consideration in the contest, the author grants the Rhode Island Bar Association the non-exclusive and perpetual right to license the caption to others and to publish the caption in its Journal, whether print or digital.



Winning caption for September/October



"Unfortunately, something I have in common with several of my clients is outstanding balance."

CASBY HARRISON III, ESQ.

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Lawyers on the Move

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Source:

Hill, J. (2024, September 28). Depression in the legal profession: Know when to seek help. One Legal. <https://www.onelegal.com/blog/lawyer-depression-in-the-legal-profession-know-when-to-seek-help/#:~:text=Johns%20Hopkins%20University%20study%5A%20thats,higher%20than%20the%20general%20population.>

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